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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

ORIGINAL
FILE

In The Matter Of
The Telephone Consumer Protection
Act of 1991

CC Docket No. 92-90

REPLY COMMENTS OF SAFECARD SERVICES, INC.

SafeCard Services, Inc. ("SafeCard"), by its undersigned counsel, hereby submits these Reply Comments on the Commission's Notice of Proposed Rulemaking in the above-captioned docket. In its initial comments in this proceeding, SafeCard set forth in detail the public interest reasons why the Commission should adopt an approach whereby telemarketing calls to residences are limited by company-specific "do not call" lists.

As a review of the comments of a number of the largest and most respected retailers and financial institutions¹ in the United States indicates, there is a broad consensus from users of telemarketing of where the appropriate balance should be drawn between individual privacy rights, public safety interests and

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¹ See, e.g., Comments of CitiCorp, Sears, Roebuck and Co., JC Penney and Wells Fargo Bank, Docket 92-90, dated May 28, 1992.

freedom of commercial speech and trade.² The consensus is that the balance between a regulatory structure which protects the privacy of individuals who do not wish to receive telemarketing calls, and a structure which permits legitimate telemarketing practices is best drawn by requiring that users of telemarketers adopt and implement "do not call" systems on a company-specific basis.

No other method proposed approaches the effectiveness of the "do not call" system in terms of cost effectiveness and practicality. This approach is clearly preferable particularly given the need to balance the interest of the millions of Americans who purchased \$435 billion of goods and services in 1990 through telemarketing sales against the interest of those Americans who deem such calls an invasion of their privacy. The superiority of the company-specific "do not call" option is further underscored by the fact that the Telephone Consumer Protection Act of 1991 specifically prohibits either of these groups from directly being charged for the cost for the regulatory mechanism. The individual company-generated and maintained "do not call" system is simply the least expensive, most workable, efficient and effective approach considered by the Commission. All the other feasible approaches would be

² SafeCard does not address the Commission's proposal with respect to automatic dialers since it does not employ this technology.

significantly more expensive to implement. This added expense would ultimately be borne by the consumer.

The National Consumers League ("NCL"), however, urges the Commission to withdraw its proposed rulemaking. NCL bases its proposal on the alleged failure of the Commission to properly take into account the "nuisance" effect of telemarketing calls.³ NCL claims that this concern was one of the motivating factors behind passage of The Telephone Consumer Protection Act of 1991.

NCL, however, fails to recognize that Congress had several objectives in adopting the TCPA. The statute clearly draws a distinction between the nature of the concern Congress was addressing with respect to the use in telemarketing of automatic dialers and Congress' concern with the use of telemarketing employing live operators. The difference in the treatment of these two methods under the Act results from differences in the nature of the problems which arise from these two methods, and the interests which must be weighed and balanced in protecting against potential abuse. In particular, Section 3 of the Act flatly prohibits the use of automatic dialing equipment to initiate residential calls without prior consent of the called party. This approach is consistent with the specific legislative finding that "residential telephone subscribers consider automated or prerecorded telephone calls . . . to be a nuisance

³ Comments of The National Consumers League at 3, 8-10.

and an invasion of privacy." (emphasis added)

New subsection (c) of Section 227, by contrast, is titled, "Protection of Subscriber Privacy Rights." It is under this section that the Commission is required to compare and evaluate alternative methods and procedures "for their effectiveness in protecting such privacy rights. . ." It is under this section that the various alternative methods for regulating telemarketing calls to residences are addressed. In enacting the Telephone Consumer Protection Act of 1991, Congress clearly drew the very distinction to which NCL objects. In fact, the Commission, in pursuing its rulemaking based on the "privacy" interests of residential consumers, is following the clear mandate of subsection (c). Nowhere in that section does Congress refer to or rely on the undefined and subjective concept of "a nuisance."

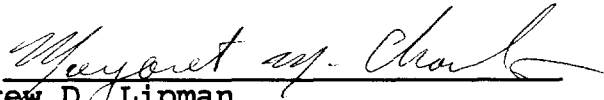
NCL also urges the Commission to graft onto the United States Postal Services Change of Address database system information relating to whether a consumer wishes to opt out of receiving telemarketing calls. While at first blush there may be some appeal to this approach, the legality, feasibility, practicality and desirability of such a new use of the United States Postal Services' system would need to be carefully examined. The cost to the United States Postal Service, as well as to postal ratepayers, would also need to be carefully considered. It is doubtful that such a program could be initiated in the short term without significant costs and

disruption to the United States Postal Service. As such, it is not clear that this approach would meet the statute's criteria of the "most effective and efficient" method to accomplish the purposes of protecting residential telephone consumers' privacy rights.

Accordingly, SafeCard reiterates its recommendation that the Commission adopt a regulation which requires telemarketers to develop, on a company-specific basis, "do not call" lists. These lists should be required to be maintained for a specified period of time to allow for effective enforcement under the Act.

SafeCard Services, Inc.

Respectfully submitted,

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June 25, 1992

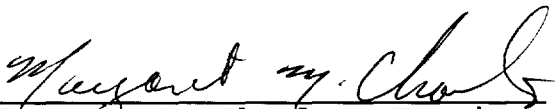
Its Counsel

CERTIFICATE OF SERVICE

I, Margaret M. Charles, hereby certify that on this 25th day of June, 1992, a copy of the Reply Comments of SafeCard Services, Inc. have been served by courier to the following:

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